

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GIL CROSTHWAITE,
Plaintiff,

No. C 09-00969 CRB

ORDER

v.

D&T CRANE CERTIFIERS,
Defendant.

This is an ERISA action for unpaid contributions to the Operating Engineers Local Union No. 3 Trust Funds. Now before the Court is Plaintiffs' motion for default judgment. Defendant has not responded to Plaintiffs' motion even though the deadline has passed. See Northern District of California Local Rule 7-3(a). Indeed, Defendant has yet to appear in this case at all. Judgment by default may be entered pursuant to Rule 55 when the defendant has "failed to plead or otherwise defend." Entry of a default judgment is discretionary. See Draper v. Coombs, 792 F.2d 915, 924-25 (9th Cir. 1986). After careful consideration, the Court concludes that oral argument is unnecessary, and GRANTS Plaintiffs' motion for default judgment. The motion hearing on calendar for August 21, 2009 is hereby VACATED.

BACKGROUND

Plaintiffs, trustees of the Operating Engineers Health and Welfare Fund, filed suit on March 5, 2009 seeking delinquent contributions, liquidated damages, and interest from

1 Defendant for the hours worked by Defendant's employees from January 2008 through June
2 2008. Proofs of service were filed on May 8, 2009, and the clerk entered default on June 1,
3 2009.

4 Defendant had a statutory duty to make timely payments to Plaintiffs' fund under
5 ERISA § 515, 29 U.S.C. § 1145, and under the collective bargaining agreement ("CBA")
6 between Defendant and Operating Engineers Local Union No. 3 of the International Union of
7 Operating Engineers, AFL-CIO, of which Plaintiffs are third-party beneficiaries.

8 Plaintiffs have established that Defendant failed to make the required payments from
9 January 2008 to June 2008, and owe \$11,762.24 in contributions, \$1,845.48 in liquidated
10 damages, and \$2,140.04 in interest, as well as \$1,997.50 in attorneys' fees and \$853.75 in
11 costs.

12 DISCUSSION

13 ERISA provides that "[e]very employer who is obligated to make contributions to a
14 multiemployer plan under the terms of a collectively bargained agreement shall . . . make
15 such contributions in accordance with the terms and conditions of such plan or such
16 agreement." 29 U.S.C. § 1145. ERISA also authorizes an award of interest on delinquent
17 and unpaid contributions, as well as liquidated damages and attorneys' fees and costs in an
18 action for collection of contributions. See 29 U.S.C. § 1132(g). The CBA entitles Plaintiffs
19 to liquidated damages of thirty-five dollars (\$35.00) or fifteen percent (15%) of the amount
20 due and unpaid to each such Trust, whichever is greater. The CBA further states that
21 immediately following the date on which the employer becomes delinquent, an interest rate
22 of twelve percent (12%) shall be added to the amount due, which includes both the
23 delinquent contribution and liquidated damages. In the Ninth Circuit, to qualify for an award
24 of statutory liquidated damages, unpaid contributions must exist at the time the lawsuit was
25 filed. See Idaho Plumbers & Pipe Fitters Health & Welfare Fund v. United Mechanical
26 Contractors, Inc., 875 F.2d 212, 215 (9th Cir. 1989). This requirement is satisfied here.

27 Under ERISA § 502(g)(2)(D), 29 U.S.C. § 1132(2)(D), Plaintiffs are also entitled to
28 "reasonable attorneys' fees and costs of the action." The CBA further provides that a

1 defaulting employer is responsible for reasonable expenses “including but not limited to,
2 reasonable attorneys’ fees, auditors’ and accountants’ fees, court costs and all other
3 reasonable expenses incurred in connection with such suit or claim including any appellate
4 proceedings therein.”

5 As the allegations of the complaint are accepted as true, and as the evidence
6 establishes that Defendant owes Plaintiffs a sum certain, Plaintiffs’ motion for default
7 judgment is GRANTED in the total amount of \$18,599.01. The Court will issue a judgment
8 in accordance with this Order.

9 **IT IS SO ORDERED.**

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12 Dated: August 17, 2009



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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE